

No. 814

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE
NINTH CIRCUIT

H. SOUTHER and W. S. CROSBY,
Appellants, }
vs. }
SAN DIEGO FLUME COMPANY,
Appellee }

Additional Brief of Appellee.

WORKS & WORKS,
Counsel for Appellee.

- Clerk

Filed May 1907

FILED

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C. H. SOUTHER and W. S. CROSBY,
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Appellee.

Additional Brief of Appellee.

In the brief of the appellant, the point is made that the decree is for too large a sum, in that the decree was rendered for water rentals for the term of one year, when it should have been for six months only, and that a mistake was made in the calculation of interest upon the installments of interest due on the water right contract, growing out of the fact that the interest commenced to run, not from the date of the contract, but from a date named in the contract one month and eighteen days later.

We have gone over these calculations, and are satisfied that a mistake was made in the particulars mentioned, and in view of that mistake, have filed our remittitur of the amount of that sum, amounting to six hundred eighty-five dollars (\$685.00), but without costs to the appellant.

It will be evident to the Court that the appeal in this case was not prosecuted on account of this mistake in the amount. The decree was submitted to counsel on the other side several days before it was submitted to the Court and signed. All that would have been necessary in order to correct the decree in this particular would have been to have called the attention of counsel and the Court to this mistake, and it would have been rectified. They cannot prosecute the appeal under such circumstances, and recover their costs, on the ground of this mistake. The application to correct the decree in this particular should have been made to the Court below.

Respectfully submitted,

WORKS & WORKS,

Attorneys for Appellee.